IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 601 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHANASMA NAGARIK SAHKARI BANK LTD. & 1 - Petitioner(s)
Versus
REGISTRAR COOPERATIVE SOCIETIES & 5 - Respondent(s)

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Appearance :

MR PRAKASH K JANI for Petitioner(s) : 1 - 2.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.
MS SHAHIN QURESHI for MR MM TIRMIZI for Respondent(s) : 3,4,
MR MAHENDRA K PATEL for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 08/08/2006

ORAL JUDGMENT

1. The petitioner is a Cooperative Bank. The petitioner has filed this petition praying for

several reliefs. However, through the arguments of learned advocate for the petitioner, main focus was on prayer clause 8(C) of the petition wherein the petitioner-bank has prayed for following directions :

> "8(C) The Honourable Court may be pleased to quash and set aside the notices dated the 1st December, 2004 (Annexure-G), 3rd December, 2004(Annexure-J) and the 7th December, 2004(Annexure-M), and be further pleased to declare that the public notice issued by respondent No.3 on the 11th December, 2004(Annexure-F) in Newspaper "Divya Bhaskar" is without any authority of law"

2. Short facts leading to the present petition are as follows :

2.1 The respondent no.5 herein had an account in the petitioner-bank. It appears that for obtaining Visa for U.K., the said respondent no.5 had made certain declarations about his bank balance with the petitioner-bank. Such declarations were not initially accurate. With this aspect of the matter, this Court is not directly concerned. Subsequently, respondent no.3 Credit Society claims to have loaned a sum of Rs. 4,15,000/- to respondent no.5. To secure

the debt, respondent no.5 according to respondent no.3 had issued post dated cheques for the said amount drawn on the petitioner-Bank. Upon presentation by respondent no.3 of the said cheques for realisation by the petitioner-bank, the petitioner-bank did not pay the amount since in the meantime respondent no.5 had requested the petitioner-bank to stop the payment of these cheques.

2.2 The respondent no.3 therefore, started issuing notices to respondent no.5 as well as to the petitioner-bank under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(here-in-after referred to as “the said Act”). First such notice came to be issued on 1-12-2004 in which respondent no.3 stated inter-alia that it had given a loan of Rs. 4,15,000/- to respondent no.5 for which the said respondent had issued cheques drawn on the petitioner-bank. The respondent no.5 as well as the petitioner are jointly liable to pay the said amount which

should be paid within a period of 60 days, failing which, further action under section 13(4) of the said Act will be taken. The petitioner-Bank gave a detailed reply on 3-12-2004 and denied its liability to pay any sum to respondent no.3 and also opposed the proceedings under the said Act.

2.3 The respondent no.3 however was not satisfied. On behalf of respondent no.3, notices after notices came to be issued against the petitioner seeking recovery of loan given by the said respondent in favour of respondent no.5. Finally a public advertisement came to be issued on 10-12-2004 in a Daily called “Divya Bhaskar”. In the public advertisement, respondent no.3 stated that the petitioner-bank has not accepted a Cheque no. 114432 in account no. 2046 though there was balance in the said account due to which notice under section 13(2) of the said Act was issued. Upon completion of the notice period, properties of the Bank are to be seized. The objections of the petitioner-Bank have been

rejected and Reserve Bank of India is also approached for cancellation of license of the petitioner-Bank.

2.4 At this stage, the petitioner-Bank approached this Court on 15-11-2005 and was granted interim relief in terms of paragraph 8(E) of the petition and thereby stayed implementation of notices as at Annexure-G,J and M issued by respondent no.3 against petitioner-Bank.

3. Appearing for the petitioner-Bank, learned advocate Shri P.K. Jani submitted that action of the respondent no.3 is illegal and misconceived. The respondent no.3 is neither a Bank nor a financial institution within the meaning of the said Bank so as to be empowered to initiate proceedings under Section 13 of the said Act. He further submitted that in any case, the petitioner-Bank had not offered any security to the respondent no.3 for giving loan to respondent no.5. The respondent no.3 therefore,

could not have proceeded against the petitioner-Bank or any of its properties.

3.1 He also submitted that there was no privity of contract between the respondent no.3 and petitioner-bank. The account holder i.e. respondent no.5 had requested the Bank to stop the payment of the cheques in question. If respondent no.3 had any right to proceed against respondent no.5, either under civil law or under criminal law, it would be open for the said respondent to do so against respondent no.5 and no action can be taken against the petitioner.

4. On the other hand, respondent no.3-Bank had resisted the petition by filing affidavit in reply and through submissions made by learned advocate. Ms. Qureshi for respondent no.3 submitted that respondent no.3 does not propose to take any action against the petitioner-Bank. However, the petitioner-Bank had through correspondence stated that criminal complaint is filed against respondent no.5 and in case there

is any order from the Competent Court in favour of respondent no.3-Bank, it shall realise the amount in question.

5. Having heard the learned advocates appearing for the parties, I find that respondent no.3 has initiated action which is wholly impermissible and unauthorised. Admittedly, there was no agreement between the respondent no.3 and petitioner-Bank. The petitioner-bank had not offered any of its properties as its security to cover the debt of respondent no.5. When respondent no.3 was giving the money to respondent no.5 on loan, the petitioner-Bank was no were in picture. Incidentally, if respondent no.5 gave post dated cheques to respondent no.3 drawn on the petitioner-bank to cover the debt through that transaction by itself by no stretch of imagination the petitioner-bank is liable, so far as respondent no.3 is concerned. Looked from any angle, respondent no.3 had no authority to proceed against the petitioner-bank under the provisions of the said Act.

5.1 Even while looked more closely, action of the respondent no.3 appears hopelessly unauthorised and ill-advised. Section 2(zb)of the said Act defines the term “security agreement”. Terms “Secured Asset”, “Secured Creditor” “Secured debt” and “Secured interest” have been well defined like wise under the said Act. Under Sub-section(2) of Section 13 of the said Act, in case of default in payment of secured debt by a borrower who is under a liability to a secured creditor under a security agreement and when his account is classified as non-performing asset, the secured creditor has the power to issue notice calling upon such a borrower to discharge his liability within 60 days from the date of notice, failing which action under Sub-section(4) of Section 13 of the said Act can be taken. Sub-section(4) of Section 13 of the said Act permits the secured creditor to take legal recourse to any one of the four measures specified therein which includes taking possession of secured assets of the borrower.

5.2 It can thus be seen that before taking any steps under Sub-section (4) of Section 13 of the said Act, a notice under Sub-section(2) of Section 13 of the said Act is imperative. In turn such a notice can be given only by secured creditor against a borrower who is under the liability of secured agreement and who has made default in repayment of secured debt.

5.3 In the present case, the petitioner is neither a borrower who was under liability under a secured agreement to pay any amount nor was respondent no.3 a secured creditor nor any of the properties of the petitioner-Bank was kept as secured assets so far as respondent no.3 is concerned. Looked from any angle therefore, respondent no.3 had no power, authority or jurisdiction to proceed against the petitioner-bank under the provisions of the said Act and in particular under Sub-section(2) of Section 13 or under Sub-section(4) of Section 13 of the said Act.

5.4 Steps taken by respondent no.3 in this regard were therefore, totally lacking any legal authority. The action was ill-advised and unauthorised. The same therefore, deserves to be quashed.

6. Quite apart from impermissiblity of the action taken by respondent no.3 against the petitioner-bank, the same not only would cause inconvenience to the petitioner-bank would also amount to attempt to tarnish the image of the Bank. The respondent no.3 had no authority to give public advertisement indicating that case under Sub-section(2) of Section 13 of the said Act has been initiated against the petitioner, that objections of the Bank have been overruled, that further action under Sub-section(4)of Section 13 of the said Act will be taken and that Reserve Bank of India is also approached for cancellation of license of the petitioner-bank. Quite apart from the action being illegal there is a distinct element of

trying to browbeat the petitioner-Bank through such means. Learned advocate Shri Jani for the petitioner further points out that despite stay granted by this Court, respondent no.3 had precipitated action further which required the petitioner to file contempt petition before this Court.

7. Considering all these aspects of the matter, while allowing the petition by quashing and setting aside the impugned notices as at Annexure-G,J,M and F the respondent no.3 is directed to pay a cost of Rs. 10,000/-(Rupees Ten Thousand Only) to the petitioner. Rule made absolute accordingly.

(Akil Kureshi,J.)

(raghu)